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Supreme Court of the United States.

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IRON CLIFFS COMPANY,
THE CLEVELAND CLIFFS IRON COMPANY,
WILLIAM G. MATHER, and
MURRAY M. DUNCAN,
Plaintiffs in Error.

vs.

NEGAUNEE IRON COMPANY,
EDWARD M. BREITUNG, and
MARY KAUFMAN,
Defendants in Error.

No. 173.

BRIEF IN BEHALF OF THE DEFENDANTS IN ERROR.

BENTON HANCHETT,
Of Counsel for Defendants in Error.
S. W. SHAULL,
Solicitor for Defendants in Error.
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BREIF IN BEHALF OF THE DEFENDANTS IN ERROR.

The suit is brought by the Defendants in Error to enjoin the commission of trespass in mining and removing ore from mineral lands owned by them.

The Bill of Complaint states this case, viz: "The lands in question were originally owned by James L. Reynolds, who, on the 26th of February, 1857, executed a conveyance of said lands to Charles T. Harvey, with a reservation of certain rights in said lands to said Reynolds. On the 17th day of September, 1857, Charles T. Harvey executed a mining lease

of the lands to the Pioneer Iron Company for the term of ninety-nine years, "for the sole purpose of mining and quarrying at its own expense such ore and marble as may be found thereon, and subject to the provisions hereafter mentioned, viz: *Provided* it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges. * * * The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, but not to its assigns." The lease is Exhibit C, Record pp. 18 19, 20.

The Pioneer Iron Co. was a corporation organized under the laws of the State of Michigan on the 3rd day of April, 1857, the term of the existence of which was, by its Articles of Association, limited to the term of thirty years. The Articles of Association are Exhibit B, Record, pp. 16 and 17.

The rights and interest in said lands of said Harvey and Reynolds, subject to said lease, were acquired by the complainants. At the time of making said lease, the Pioneer Iron Company contemplated constructing a furnace or forges for the manufacture of iron, and said lease was made with the intention that only such ores should be removed from said lands as should be actually converted by said Pioneer Iron Company in the furnaces and forges then being constructed.

On or about the first of January, 1866, the Pioneer Iron Company ceased to do business and on the 10th of March, 1866, the Pioneer Iron Company leased to the Iron Cliffs Company, a corporation organized under the laws of the State of Michigan, for the period of ten years, its entire real and personal property, consisting of all its iron works, buildings, lands and rights, and has not since that date mined or operated under said lease, but from that date abandoned the lease. Some time prior to January 1st, 1873, the Iron Cliffs Company became the owner of all the capital stock of the Pioneer Iron

Company, and said stock since that time has been held in the names of different individuals for the uses and purposes of said Iron Cliffs Company, and the certificates of stock representing said capital stock of the Pioneer Iron Company have been and are now held in the names of different individuals who are officers, directors stockholders, agents or servants of the Iron Cliffs Company, and of the Cleveland Cliffs Iron Company, a corporation organized under the laws of the State of West Virginia, which two corporations have been operating together in the conduct of their business, and whose officers and agents are in the main the same persons. Said stock is held, as aforesaid, for the use and benefit of said Iron Cliffs Company and said Cleveland Cliffs Iron Company.

On the 2nd of April, 1887, the corporate existence of the Pioneer Iron Company, by the terms of its Articles of Association, expired by limitation, and said corporation became thereby dissolved, and whatever rights the Pioneer Iron Company held under and by virtue of said lease were terminated and extinguished, and reverted to and became invested in said Charles T. Harvey and his assigns.

From and after the 10th of March, 1866, the furnaces and forges of the Pioneer Iron Company, in which, by the terms of said lease, dated September 17, 1857, it was contemplated that the ore therein referred to should be manufactured into iron, were never operated by said Pioneer Iron Company, but were operated by the Iron Cliffs Company and its lessees for a number of years thereafter, but said furnaces and forges were entirely dismantled and destroyed many years ago, and no longer exist. Recently, and within the year last passed, the Iron Cliffs Company and Cleveland Cliffs Iron Company, recognizing the complainants' right in said lands, free from any claims or rights under said lease of September 17, 1857, on the part of the Pioneer Iron Company, applied to the com-

plainants through their president, William G. Mather, to obtain a lease of said lands, or a portion thereof, under which the lessees should have the right to mine and remove iron ore therefrom, which application the complainants refused to grant. The Bill then states, paragraphs 16, 17 and 18, pp. 8 and 9, as follows: "And failing to secure the right from your orators to mine the ore from said lands by means of such proposed lease, the said Iron Cliffs Company and said Cleveland Cliffs Iron Company, and their officers, directors and stockholders have fraudulently combined and planned to obtain iron ore from said lands against the rights of your orators and without payment therefor, by the means following:

They falsely and fraudulently claim and pretend that said Pioneer Iron Company still exists and owns and holds said lease notwithstanding said Pioneer Iron Company expired by the limitation of its term and was dissolved and ceased to exist in the year 1887 as hereinbefore stated; and they make use of the name of said Pioneer Iron Company as a cover under which and by means of which they seek to carry on the work of mining and removing ore from said lands, and they are now actually engaged in carrying out said plan, and to that end have given notice under the name of the Pioneer Iron Company to your orators, of entry upon the following described lands under said lease. (Describing lands.) And by their agents, employes and servants, have entered upon said lands against the protest of your orators and are sinking test pits, tearing up the soil and exploring said lands for iron ore, and are preparing to mine and remove and are mining said ore therefrom. And your orators aver that the said agents, employes and servants of said Iron Cliffs Company and of said Cleveland Cliffs Iron Company, as aforesaid, will continue to carry on the work of exploring and mining and removing the ore from said lands unless restrained therefrom by the order

and decree of this honorable Court. "17th. And your orators show that all the lands hereinbefore specially described are mineral lands and have therein large deposits of valuable iron ore, and that the chief value of said lands consists in the iron ore situated therein, and the mining and removing therefrom of said iron ore by the defendants would take from said lands their principal value and would work and would be for your orators an irreparable injury." "18th. Your orators show that the officers and agents of said Iron Cliffs Company and said Cleveland Cliffs Iron Company who are engaged in and carrying out the said scheme and plan to defraud your orators and to mine and remove the iron ore from said lands under the cover and by the use of the name of the Pioneer Iron Company, are, so far as they are known to your orators William G. Mather, who is the president of said Iron Cliffs Company and also president of said Cleveland Cliffs Iron Company, and Murray M. Duncan, who your orators are informed and believe, and upon information and belief charge the truth to be, is managing agent of the said Iron Cliffs Company and of the said Cleveland Cliffs Iron Company. That said Duncan and said Mather and their confederates, as aforesaid, well know that the corporate existence of the said Pioneer Iron Company has long since been terminated and said corporation dissolved, and that the rights and privileges granted in said lease of date September 17, 1857, have reverted to said Charles T. Harvey and his grantees; notwithstanding which said Duncan, under the pretense that he is acting as agent of said Pioneer Iron Company, is engaged in superintending and directing said work which is being done on said lands by various persons who are laborers acting under his orders." The Bill states that the claims of said Duncan, Mather, the Iron Cliffs Company and the Cleveland Cliffs Iron Company under the name of the Pioneer Iron Company

constitute a cloud upon complainants' title. Said Mather, Duncan, the Iron Cliffs Company, and the Cleveland Cliffs Iron Company are made defendants, and the Bill prays "that said William G. Mather, the said Iron Cliffs Company, and the said Cleveland Cliffs Iron Company, and their officers, directors, agents, attorneys and employes, be perpetually enjoined and restrained from setting up in the name of the Pioneer Iron Company or in other manner, any right or title under said lease from said Charles T. Harvey to said Pioneer Iron Company, in or to your orators' said lands and entering upon or removing from said lands any iron ore or marble, and for such other and such further relief as to the Court shall seem meet and proper."

THE ANSWERS TO THE BILL OF COMPLAINT.

Murray M. Duncan answers separately, (Record, p. 30), and admits the execution of said lease to the Pioneer Iron Company, denies that the Pioneer Iron Company is dissolved, and denies that any of the rights, interests and property of the Pioneer Iron Company under said lease were terminated or reverted to Charles T. Harvey or his grantees, and avers that said company is still the owner of said property, rights and interest granted under said lease. He admits that he, as agent for the Pioneer Iron Company, is actively engaged in conducting mining operations on some of the lands covered by said lease for the purpose of discovering ore. That the

Pioneer Iron Company acts through him as its agent in personal charge of the work in endeavoring to discover said ore, and that if ore is discovered in sufficient quantities for mining, the Pioneer Iron Company proposes to continue such exploration until it finds ore in said lands, and further answering says, "that he has no personal interest in the matters set forth in said Bill to any extent whatever, but that in all his actings and doings he is merely the agent of said Pioneer Iron Company, and the agent only of said Pioneer Iron Company, and of no other corporation or person whatsoever, and that no other person or corporation except said Pioneer Iron Company is engaged in or has directed the actings and doings of this defendant as aforesaid, or of any of the operations and explorations being conducted on said lands."

The Iron Cliffs Company, the Cleveland Cliffs Iron Company, and William G. Mather answering together, (Record, p. 40), severally say that they admit the execution of said lease of the Pioneer Iron Company, and denying all the allegations in paragraph 16 of the Bill, say that the entry and exploring operations on the land were made and have been carried on by the Pioneer Iron Company, and none others, and deny any collusion or combination as alleged in said paragraph 16 of the Bill, and deny that the charter of the Pioneer Iron Company had expired. They admit that the Pioneer Iron Company, through its agents and officers, have continued to carry on the explorations, and that operations were begun and have been carried on by the Pioneer Iron Company by the direction of William G. Mather, as one of the officers of the Pioneer Iron Company. By paragraph 19, p. 44, the Answer says, "and these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they, *or some of them*, may be stockholders of said Pioneer Iron Company, or as an officer or agent thereof."

After the proofs had been taken in the case under the above pleadings and upon the cause coming on for hearing the following amendments were made. (Record, p. 49):

The Bill of Complaint was amended by adding to paragraph 18 of the Bill as follows, (Record, p. 50): "The said defendants claim and pretend that under the provisions of Act 142 of the Public Acts of 1889 of the legislature of the State of Michigan, and under the provisions of Act No. 60 of the Public Acts of 1899 of the legislature of the said State said Pioneer Iron Company has been reorganized, and that by reason of said Acts said reorganized company has thereby been revived, and that the right to mine ore free of royalty under said lease from said lands has thereby become revived and vested in said Pioneer Iron Company.

The defendants' answers were amended by adding after paragraph 16 in each of the answers, the following, (Record, p. 51): "These defendants admit that in April, 1901, said Pioneer Iron Company has caused to be filed in the office of the Secretary of State of Michigan, and the County Clerk of Marquette County, certain amended and perfected Articles of Association of said company in renewal of organization or reorganization of said company and that said Pioneer Iron Company claims to be under said filings as well as previous filings, a valid corporation, and to have been properly reorganized under the laws of this State under the acts as set forth in the amended Bill of Complaint or otherwise, and that these defendants are informed and believe that the said Pioneer Iron Company is perfectly organized as a corporation under the law of the State of Michigan, and is now existing as such and is in all respects a valid and existing corporation under said law."

The further amendment of William G. Mather alone answering for himself was made, (Record, p. 51) *as follows*

"And this defendant, William G. Mather, answering for himself, says he owns in his own right and as trustee, 3940 shares of stock of said company, and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, that said Pioneer Iron Company not being made a party to this proceeding, he as such stockholder, and said Pioneer Iron Company would thereby be deprived of its and his property without due process of law in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decision or findings of the Court in any way limiting terminating, changing, modifying, annulling, or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease, and as expressed therein would be void and of no effect under said provision of said amendment of the Constitution of the United States."

I.

The Writ of Error should be dismissed for want of jurisdiction.

The law has been stated and many times repeated that to give the Court jurisdiction of a writ of error to a State Court, "It must appear affirmatively not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was decided adversely to the party claiming a writ under

the Federal laws or Constitution, or that the judgment as rendered ~~should~~ not have been given without deciding it; that where the record discloses that, if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States another question, not federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

Harrison vs. Morton, 171 U. S., 38 at 47.
Pierce vs. Somerset Railway, 171 U. S., 641.
Cook County vs. Calumet &c. Co., 138 U. S., 635 at 651.
White vs. Leovy, 174 U. S., 91 at 96.
Remington Paper Co. vs. Watson, 173 U. S., 443.
McQuade vs. Trenton, 172 U. S., 636 at 639.
Chappell Chemical Co. vs. Sulphur Mines Co., 172 U. S., 465, 471.
Capital Bank vs. Cadiz Bank, 172 U. S., 425.
Giles vs. Teasley, 193 U. S., 146 at 160.
Eustis vs. Bolles, 150 U. S., 361 at 369, 370.
California Powder Works vs Davis, 151 U. S., 389 at 393.

In this case a question not federal was raised, and was decided against the plaintiffs in error, which is sufficient to sustain the judgment. Briefly the case is this:—The Defendants in Error became the owners of the lands in question, which were subject to the lease for the term of ninety-nine years made on September 17, 1857, by Charles T. Harvey to the Pioneer Iron Company of the right limited to the Pioneer Iron Company exclusively, without power to transfer, to mine such ore as the Company should, itself, actually convert into merchantable iron in its own furnaces or forges which were then in process of construction.

The Pioneer Iron Company was organized on the 3rd day of April, 1857, for the limited term of thirty years. On March 10, 1866, said Company made a lease for ten years to the Iron Cliffs Company of all its property, iron works, and buildings, and itself ceased to do business and from that date has not mined or operated under such lease of September 17, 1857, but abandoned the lease. Prior to 1873 the Iron Cliffs Company became the owner of all the capital stock of the Pioneer Iron Company, which stock has since that time been held in the names of the officers, directors, stockholders, agents or servants of the Iron Cliffs Company and the Cleveland Cliffs Iron Company for the benefit of said two last named companies, which companies operate together, and whose officers and agents are the same persons.

The furnaces and forges of the Pioneer Iron Company were operated for a number of years by the Iron Cliffs Company, but were destroyed many years ago, and no longer exist. By the limitation of its charter, the Pioneer Iron Company expired on the 2nd day of April, 1887, and ceased to exist and its rights under the lease reverted to the Defendants in Error.

Notwithstanding that the Pioneer Iron Company expired by the limitation of its charter, and was dissolved and ceased to exist in 1887, the Iron Cliffs Company and Cleveland Cliffs Iron Company, William G. Mather, who is the president of said two companies, and Murray M. Duncan, who is managing agent of said companies, under the pretense that he is acting as the agent of the Pioneer Iron Company, have fraudulently combined and planned to obtain iron ore from said lands against the rights of the Defendants in Error by the means that they falsely and fraudulently claim and pretend that said Pioneer Iron Company still exists and owns and holds said lease, and they make use of the Pioneer Iron Company's name as a cover under which and by means of which *they* seek to

carry on the work of mining and removing ore from said lands, and are now actually engaged in carrying out said plan, and have entered upon said lands and are sinking test pits, tearing up the soil and exploring the lands for iron ore and are preparing to mine the ore. (Record, pp. 7, 8, 9). The Bill *prays that they be enjoined from such acts.* (Record, p. 11).

The only Federal question presented in any manner in the case is by the several answer of William G. Mather answering for himself, saying, (Record, p. 52), that "he owns in his own right and as trustee 3940 shares of said stock of said Company, and that if any decree be rendered in this case by the Court in any way declaring a forfeiture or termination or expiration of said ninety-nine year lease or in any way affecting the rights of the Pioneer Iron Company thereunder, the said Pioneer Iron Company not being made a party to this proceeding, he, as such stockholder, and said Pioneer Iron Company, would thereby be deprived of his and its property without due process of law in violation of the provision of the Fourteenth Amendment of the Constitution of the United States, which forbids any State to deprive any person of life or liberty or property without due process of law, and this defendant avers that any decisions or findings of the Court in any way limiting, modifying, annulling or diminishing the value of any of the rights of the Pioneer Iron Company under said ninety-nine year lease, and as expressed therein, would be void and of no effect under said provision of said amendment of the Constitution of the United States." '

There is no Federal question raised by this answer unless it appears to this Court that the Supreme Court of Michigan by its decree declared a forfeiture or termination or expiration of said ninety-nine year lease *as against the Pioneer Iron Company.* If the Court made no decree against that Com-

pany by which its rights would be affected, then, there is no Federal question presented. Neither the Pioneer Iron Company, nor William G. Mather as a stockholder in the Company, would be affected in any manner by the decree.

First. The Bill of Complaint makes no case against the Pioneer Iron Company, and the decree in no respect affects its rights or the rights of Mather as a stockholder in the Company.

The case made by the Bill is against the Iron Cliffs Company, the Cleveland Cliffs Iron Company, William G. Mather, and Murray M. Duncan alone, averring that the Pioneer Iron Company held a lease to the lands by which the right to mine ore was limited to the right made exclusively to itself to mine such ore, and such only as it should convert into merchantable iron in its own furnaces and forges then being constructed; that the Pioneer Iron Company ceased to exist in 1887, and its furnaces and forges had been destroyed, and, notwithstanding these facts, the Plaintiffs in Error fraudulently pretending that the Company still exists, under the cover and by means of its name seek to mine such ore and thereby avail themselves of such lease.

Such a case presents no Federal question by reason of not making the Pioneer Iron Company a party to the suit. The case is solely against the Plaintiffs in Error, and the averment that they are making use of the name of the Pioneer Iron Company, a corporation which has ceased to exist, as a cover for their acts, does not require that such Company shall be made a party to the suit.

If the Pioneer Iron Company is dead, has ceased to exist, it could not be made a party. In a suit against the parties for

their personal acts it may be averred and shown that the Pioneer Iron Company, whose name they fraudulently use as a cover for their acts, has ceased to exist, and is no longer a corporation.

2 Clark & Marshall on Private Corporations, pp. 922, 923. Section 323.
Carey vs. Cincinnati & Chicago R. Co., 5 Iowa, 357 at 367.
Atty. General vs. Railroad Co., 112 Ill., 520 at 537, 538.
Bradley vs. Rappell, 113 Mo., 545.
32 S. W., 645 at 646, 647, 648.
Sturges vs. Vanderbilt, 73 N. Y., 384 at 389, 390.
Anthony vs. American Glucose Co., 146 N. Y., 407.
41 N. E., 23 at 25.

The facts in relation to the Pioneer Iron Company are stated in the Bill of Complaint for the purpose of showing the acts which constitute the fraud by which the Plaintiffs in Error seek to defraud and wrong the Defendants in Error.

The averments are of the same character as would be the case were the Plaintiffs in Error charged by the Bill with making use of the name of a fictitious person or corporation which they fraudulently set up as a cover for their acts. In either such case the claim is false and fraudulent, and may be shown to be false and fraudulent by showing that in the one case the corporation under whom they claim to act is dead, and in the other case that the corporation or person is fictitious.

Second. It was not necessary for the Court to find that the Pioneer Iron Company does not exist in fact as a corporation, in order to grant the relief prayed for.

The *gravamen* of the case is this, viz: The Plaintiffs in Error falsely and fraudulently make use of the name of the

Pioneer Iron Company as a cover for their wrongful acts, by means of which use of its name they themselves mine ore from the lands, converting it to their use.

The case alleged is that the Pioneer Iron Company ceased to do business from March 10, 1866, and ceased to operate under the lease, and abandoned the lease. Its furnaces and forges, to which mining under the lease was made appurtenant, have been destroyed, and no longer exist. The Iron Cliffs Company and Cleveland Cliffs Iron Company acquire and own all the capital stock of the Pioneer Iron Company, and the Plaintiffs in Error, in order to mine the ore for themselves, do the mining under the cover of the name of the Pioneer Iron Company.

The question is, are the Plaintiffs in Error doing those acts? *If they are doing those acts, they are doing the mining, and the Pioneer Iron Company is not doing the mining.* In such case they are mining under the false pretense and claim that the Pioneer Iron Company is doing the mining. By such acts they are defrauding the Defendants in Error. The restraining the Plaintiffs in Error under facts so found in no way affects the right of the Pioneer Iron Company or Mather as a stockholder of the Company. The Pioneer Iron Company in such case is not a necessary party.

1 Cook on Corporations, Section 6, 2 Id., Section 663, 664, (5th Ed.).
Anthony vs. American Glucose Co., 146 N. Y., 407.
41 N. E., 23 at 25.
Leigh vs. Kewanaw Mfg. Co., 127 Fed., 990 at 991.
New Orleans Debenture Redemption Co. vs. Louisiana, 180 U. S., 320.

2 Cook on Corporations, Section 663, p. 1535, says: "The disabilities of the corporation are not disabilities of the stock-

holders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a 'cloak' for frauds. Such cases as these are becoming common, and the Courts are becoming more and more inclined to ignore the corporate existence, when necessary, in order to circumvent the fraud." '

Third. The Federal question (if there is any such question) is raised in the case by William G. Mather alone.

The Answer of Murray M. Duncan states as follows: "That he has no personal interest in the matters set forth in said Bill to any extent whatever, but that in all his actings and doings he is merely the agent of the Pioneer Iron Company." (Record, p. 34).

The Iron Cliffs Company, Cleveland Cliffs Iron Company and William G. Mather answering together, says as follows: "And these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they, *or some of them*, may be stockholders of said Pioneer Iron Company, or as an officer or agent thereof." (Record, p. 44).

The Answer of the Iron Cliffs Company and Cleveland Cliffs Iron Company as thus made was not changed by the amendment. (Record, p. 51).

The amendment setting up the Federal question is expressly confined to the answer of William G. Mather, 'answering for himself.' (Record, pp. 51, 52).

In no other way is any Federal question raised or presented by the Record of the case.

It is in respect to Mather only that the Federal question raised by his answer can be considered in this Court.

Sulley vs. National Bank, 178 U. S., 289 at 297.
Ludeling vs. Chaffee, 143 U. S., 301 at 305.
Giles vs. Little, 134 U. S., 645 at 650.

In Sulley vs. National Bank, 178 U. S., 289 at 297, the statement of the Court, p. 297, is as follows: "However it may be in regard to the rights of parties on appeal in the State Court, we think that in order to be heard in this Court the question must have been raised in the State Court by the individual who seeks to have it reviewed here. The plaintiff in error in this Court must show that he has himself raised the question in the State Court which he argues here, and it will not aid him to show that some one else has raised it in the State Court, while he failed himself to do so."

Fourth. The Federal question raised by Mather's Answer rests upon the alleged fact that he is a stockholder in the Pioneer Iron Company.

For the Court to consider the Federal question raised by him, it must appear to the Court that he is such stockholder of the Pioneer Iron Company.

New Orleans vs. New Orleans Water Works Co., 142 U. S., 79 at 88.
Millingar vs. Hartupee, 6 Wall., 258 at 262.

In New Orleans vs. New Orleans Water Works Co., 142 U. S., 79, the suit was brought by taxpayers, and the Federal

question raised was that by the statute of the legislature of Louisiana, the contract made by the Water Works Company and New Orleans had been impaired, and that by such action the plaintiffs in error had been deprived of their property without due process of law. Dismissing the suit for want of jurisdiction, the Court says, p. 88: "We think that before we can be asked to determine whether the statute has impaired the obligation of a contract, it should appear that there was a legal contract subject to impairment and some ground to believe that it has been impaired, and that to constitute a violation of the provision against depriving any person of his property without due process of law, *it should appear that such person has a property in the particular thing of which he is alleged to have been deprived.*"

Whether Mather is a stockholder of the Pioneer Iron Company is a question of fact for the determination of the State Court, the finding of which does not involve any Federal question, and the finding upon that fact by the State Court is conclusive upon this Court.

Fifth. The finding and decision of the Supreme Court of Michigan. (The italics are ours).

First. The Court finds that the purpose of the Bill is not to forfeit the lease, but to enjoin a continuing trespass.

The opinion of the Court says, (Record, p. 568): "We think, however, the main purpose of the Bill *is not to declare a forfeiture of the lease, but to determine the rights of the parties, which depend largely upon the construction of the deeds, the leases and the various acts and conduct of the parties, extending over a period of more than forty years, and to enjoin a continuing trespass.* The case is one peculiarly ap-

propriate to a Court of Equity. The Bill sets forth three notices *in the name of the Pioneer Iron Company* that it had entered upon the disputed lands for the purpose of mining iron ore. It is, therefore, apparent that numerous acts of trespass, and the removal of valuable ore were threatened. The defendants are not in possession. * * * Whether or not, under these circumstances, ejectment would lie, we need not determine. Complainants being in possession of the property, if their title is valid, irreparable injury was threatened by the defendants. Such trespasses a Court of Equity will enjoin."

Second. The Court finds that the Pioneer Iron Company is used as a "dummy" by the Iron Cliffs Company, and the Cleveland Cliffs Iron Company, who own all the capital stock of the Pioneer Iron Company, and all its property both real and personal, and that the acts of the defendants (the Plaintiffs in Error) are done in the name of the Pioneer Iron Company for their own benefit.

Referring to the objection that the Pioneer Iron Company is not made a party to the suit the Court uses this language. (Record, pp. 569, 570): "It is also urged as a fatal objection to the maintenance of the Bill that the Pioneer Iron Company is not made a party. Under the allegations of the Bill, *as well as under the proofs, the Pioneer Iron Company is used as a "dummy" for the benefit of the defendant companies.* The defendants own and have owned for many years, *all its capital stock*, its furnaces and property, both real and personal. They have managed all its affairs, *and for their own benefit.* All its accounts, if any have been kept in the name of the Pioneer Iron Company, *have been kept upon the books*

of the defendants. The defendants refused upon the trial to produce the books of the Pioneer Iron Company, or their own books showing the accounts. Some of its officers having charge of the books were produced as witnesses, and testified to the above facts. *Under these circumstances these defendants cannot escape the consequences of their acts done in the name of the Pioneer Iron Company for their own benefit.* Admitting that the Pioneer Iron Company is not a dead corporation, *yet all its property, franchise and rights are owned by the defendant companies,* so far as the rights under the ninety-nine year lease are concerned and are fully represented by those now before the Court."

Again, on p. 575, the Court says: "Soon after the execution of the ninety-nine year lease, the Pioneer Iron Company made some explorations upon certain portions of the lands covered thereby, found ore, but not in paying quantities, abandoned the explorations, and for fully forty-three years made no other attempt to avail itself of this mining right.

"In 1866 it conveyed to the Iron Cliffs Company by lease for a period of ten years all its iron works, buildings lands and rights, &c., (reserving, however, certain rights and privileges not necessary to mention), and provided by the lease that dividends should be paid directly to its stockholders rather than into its treasury.

"*The Iron Cliffs Company afterwards became the owner of all its stock, and thereafter carried on the furnace business.* The Pioneer Iron Company never thereafter took any control of its furnace. *It was regarded as merged in the Iron Cliffs Company.* So notorious was this that in the year 1877 the commissioner of mineral statisticts, in his first annual report, speaking of this company, said: "The Pioneer Iron Company, by whom the furnace was built, became subsequently merged into the Iron Cliffs Company. In subsequent reports

it was referred to as 'absorbed by the Iron Cliffs Company.' The officers of the Pioneer Iron Company thereafter neither made nor filed any reports as the law expressly required them to do."

Third. The above is an express finding and decision that the Iron Cliffs Company and the Cleveland Cliffs Iron Company *own all the capital stock* of the Pioneer Iron Company, *and it constitutes a distinct finding that Mather does not own any of its stock.*

It is also a distinct finding by the Court that the Plaintiffs in Error use the Pioneer Iron Company as a "dummy" and do their acts in the name of the Pioneer Iron Company for their own benefit. We have already in the original brief upon the motion to dismiss shown that upon the evidence in the case Mather was not the owner of any of the capital stock of the Pioneer Iron Company at the time the Bill was filed in this case, and we do not wish to add anything to the statement made in that brief upon that subject.

The counsel for the Plaintiffs in Error in their supplemental brief upon the motion to dismiss the Writ of Error, p. 7, say: "The Supreme Court was careless in its statements as to the ownership of the stock of the Pioneer Iron Company."

The fact of the ownership of the stock by the Iron Cliffs Company was directly put in issue by paragraph 12 of the Bill (R., p. 7), and by paragraph 11 of the Answer, (R., pp. 41, 42), and the finding of the Court is upon that direct issue. The evidence abundantly sustains the finding of the Court.

The reference made by the counsel to p. 531 of the Record, as showing the parties who were stockholders of the Pioneer Iron Company, relates to pretended proceedings for reorganization of the Pioneer Iron Company, *taken April 4th and 9th* 1901, *after the proofs had been taken and closed in this suit,*

and such proceedings were put in evidence on the final hearing of the case. The proofs were taken in the suit at a session of the Circuit Court held March 13th to March 23rd, 1901. (Record, p. 52.) See Record, pp. 529, 530.

It will be noted that these proceedings were taken fourteen years after the charter of the Pioneer Iron Company had terminated by its limitation, and no proof was offered to show that the parties assuming to reorganize the Company were stockholders of the Company, or had any right to act in the capacity of stockholders of the Company.

Fourth. The Court finds that the Pioneer Iron Company expired by the limitation of its charter, and that the defendants (the Plaintiffs in Error) claiming a reorganization of the Company, the burden was upon them to show a valid reorganization, but the Court does not find it necessary to decide upon the defendants' claim of reorganization of the Company.

The Court says, p. 569: "The theory of the complainants as stated in their Bill, is that the Pioneer Iron Company is a dead corporation; its charter expired by limitation April 2, 1887; and that no steps were taken for some time thereafter to reorganize the corporation under the amendment to the Constitution and the law; and that that action was wholly invalid. *The Pioneer Iron Company, therefore, was not a necessary party.* (Citing authorities.) *Complainants could not well have made the Pioneer Iron Company a party defendant without recognizing it as an existing corporation. Its existence was in issue, and having expired by limitation, of its charter,* the burden of proof was upon the defendants to show a valid reorganization, so as to make it the successor of the Company within the terms of the ninety-nine year lease.

Equity will enjoin the threatened acts of those assuming to act within the name of a dead corporation."

The Court further says, (Record, p. 576) as follows: *"The charter of the Pioneer Iron Company expired by limitation April 2, 1887.* The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed either by the Constitution or by the Statute, authorizing a reorganization of corporations which had expired by limitation.

"A constitutional amendment was adopted in 1889 authorizing the legislature to provide by general laws for one or more extensions of the term of such corporations, and also for the reorganization for a further period not exceeding thirty years of such corporations whose terms have expired by limitation on the consent of not less than four-fifths of the capital. Pursuant to this authority the legislature in 1889 passed an act authorizing such reorganization, 2 Comp. Laws, Sec. 7035. Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the ninety-nine year lease should the reorganization be held to be valid. *Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.*"

Fifth. The construction by the Court of the ninety-nine year lease.

The Court places a construction upon the terms of the lease, by which construction the Court determines that the right to

mine ore under the lease is limited to the Pioneer Iron Company, and is not transferable; that its own right to mine ore is made appurtenant to its own furnace then existing, which is referred to in the lease; that such furnace has been destroyed by the Iron Cliffs Company and the Cleveland Cliffs Iron Company and determines that it is not the Pioneer Iron Company which does the acts complained of, but the defendant companies do those acts.

The Court says, (R., p. 573): *"The ninety-nine year lease conveyed to the Pioneer Iron Company only an indivisable, incorporeal, and personal right to mine ore, and then only for such as it should actually convert into merchantable iron at its own furnaces or forges. It granted only certain rights and privileges for a specific purpose. It prohibited assignment and the mining of ore for furnaces not owned by the Company."*

After referring to the right reserved to Harvey, his heirs and grantees, to mine ore, and the fact of the conveyance made by Harvey as a division of its incorporeal hereditament, the opinion proceeds as follows, (Record, p. 573): "Was this right to mine ore under this lease appurtenant to the furnace then existing? It is true that the lease itself does not in express terms limit it to the then existing furnace. We must, therefore, look to the situation of the parties, the object in contemplation, and the surrounding circumstances in determining the question."

After referring to the situation of the parties, the object in contemplation, and the surrounding circumstances, the opinion says, (Record, pp. 574, 575): "We therefore conclude that the Pioneer Iron Company contemplated, provided for, and erected only one furnace with two stacks; that the parties contracted with reference to that furnace; and *that the mining right conveyed was appurtenant to the furnace.*

"Sixth. By the voluntary act of the defendant companies who, since 1866, operated it, the furnace was dismantled in 1894 and totally destroyed. It has never been rebuilt, and there evidently was no intention to rebuild it. *The abandonment and destruction of the furnace also destroyed the appurtenant right to mine the ore under the lease. Nothing was left for the right to be appurtenant to.*"

Seventh. The findings of the Supreme Court of Michigan are the following, viz.: That all the capital stock of the Pioneer Iron Company was acquired and owned by the Iron Cliffs Company, by which finding the Court finds that William G. Mather was not the owner of any of the capital stock of the Pioneer Iron Company—that the charter of the Pioneer Iron Company expired by limitation on April 2 1887—that the ninety-nine year lease conveyed to the Pioneer Iron Company only a personal right to it to mine only such ore as it should itself actually convert into merchantable iron in its own furnace, which was referred to in said lease—that the lease prohibited assignment and the mining of ore for furnaces not owned by the Pioneer Iron Company—that the right to mine ore under lease was appurtenant to the furnace referred to in the lease—that such furnace was destroyed by the Iron Cliffs Company and Cleveland Cliffs Iron Company, called by the Court "Defendant Companies"—that the Pioneer Iron Company is used as a "dummy" for the benefit of the said "Defendant Companies," and that the acts of the defendants are done in the name of the Pioneer Iron Company for their own benefit.

These findings of the Supreme Court of Michigan upon the facts are conclusive upon this Court.

Dower vs. Richards, 151 U. S., 658 at 663, 666.
California Powder Works vs. Davis, 151 U. S., 389 at 393, 394.
Israel vs. Arthur, 152 U. S., 355 at 362.
Egan vs. Hart, 165 U. S., 188 at 189, 192.

Telluride Power &c. Co. vs. Railway Co., 175 U. S., 639 at 645, 647.
Telluride Power &c. Co. vs. Railway Co., 187 U. S., 569 at 584.
Clipper Mining Co. vs. Eli Mining Co., 194 U. S., 220 at 222.
Mining Co. vs. Boggs, 3 Wall., 304 at 309, 310.
Lewis vs. Campau, 3 Wall., 106.
Carpenter vs. Williams, 9 Wall., 785 at 786.
Western Union Telegraph Co. vs. Call Pub. Co., 181 U. S., 92 at 103.

The finding of fact by the State Court upon which the decision of the State Court is based *is conclusive notwithstanding that if the fact were found differently a Federal question would be presented.*

Israel vs. Arthur, 151 U. S., 355 at 362.
Egan vs. Hart, 165 U. S., 188 at 192.
Telluride Power Co. vs. Railway Co., 175 U. S., 639 at 647.
Dower vs. Richards, 151 U. S., 658 at 668.

In a chancery case, (which is the present case), as in a case at law, when the facts are found by the Court below, this Court is concluded by such finding.

Egan vs. Hart, 165 U. S., 188 at 189.
Bement vs. National Harrow Co., 186 U. S., 70 at 83.
Pittsburg &c. Co. vs. Cleveland I. M. Co., 178 U. S., 270 at 279. (Suit in Chancery).

The position of the Supreme Court of Michigan upon the facts found is that, whether the Pioneer Iron Company is regarded as a dead corporation, or as a corporation having an existence, it is being used by the defendants as a "dummy" and its name used as a cover to shield their own acts done for their own benefit in mining the ore.

The decree is that the decree of the Circuit Court be affirmed. (Record, p. 557).

The decree of the Circuit Court which is affirmed is as follows: (Record, p. 559): "It is ordered, adjudged and decreed that the defendants, their counsellors, attorneys, solicitors and agents, and each and every of them whether acting in their individual or representative capacity, immediately vacate and remove from the lands described in the Bill of Complaint, and that they and each of them, be and they hereby are perpetually enjoined from further entering upon the said lands of the complainants for the purpose of exploring for or taking therefrom any minerals or iron ore, or for any purpose whatever, without the consent and authority of the complainants."

The decree is not a decree against the Pioneer Iron Company, nor against its stockholders as stockholders. It enjoined the personal acts of the defendants which are done, not by the Pioneer Iron Company nor by the defendants for that Company as its agents, but acts which are done by themselves for their own benefit, by making use of the name of the Pioneer Iron Company to conceal the fact that themselves, and not the Pioneer Iron Company, do the mining. *The terms of the decree in no manner prevent the Pioneer Iron Company from asserting its rights under the lease either in Court, or by acts out of Court.*

Had these defendants, under the claim that the Pioneer Iron Company had assigned to them the lease, gone to mining ore from the lands, manufacturing it in their own furnaces, the suit to restrain them from such acts on the ground that they could obtain no right under the lease to mine the ore because the lease was not assignable, and because only such ore could be mined under the lease as the Pioneer Iron Company itself

should actually convert into merchantable iron in its own furnaces, it clearly would not have been necessary in such case to make the Pioneer Iron Company a party to the suit. The Court would have been called upon, as in the present case, to construe the lease and determine whether it was assignable by the Pioneer Iron Company, and whether any party beside the Pioneer Iron Company could mine ore under it, and whether ore could be mined for any other purpose than for actual conversion into merchantable iron by the Pioneer Iron Company itself in its own furnaces.

In such case the decree would be the same in terms as the decree which is rendered by the Supreme Court of Michigan in the present case.

It is said by the Plaintiffs in Error that the decree disposed of the rights of the Pioneer Iron Company because it enjoins the defendants, whether "acting in their individual or representative capacity." The terms "representative capacity" do not refer to the defendants in a representative capacity *as agents in fact* of the Pioneer Iron Company, because the Court expressly finds under the proofs that the Pioneer Iron Company is used as a "dummy" for the benefit of the defendant companies, and that their acts done in the name of the Pioneer Iron Company are done by them for their own benefit, *while claiming to represent that Company.*

The Court expressly withholds any decision upon the rights of the Pioneer Iron Company itself under the lease. The Court holds that questions relating to the rights of the Pioneer Iron Company itself are not involved in the decision of the case.

The Court says, (p. 576): "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in

position to avail itself of this statute, *and also the effect upon the ninety-nine year lease should the reorganization be held to be valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them.*"

The decree has reference to the acts of the Plaintiffs in Error as found by the Court, viz: Their claim to represent the Pioneer Iron Company while using its name to cover their own acts done for their own benefit in mining ore for their own use. It is these acts done by them *under their pretense of representing the Pioneer Iron Company which are enjoined.*

Sixth. The claim of the Plaintiffs in Error that the Federal question was raised by the Iron Cliffs Company as a stockholder of the Pioneer Iron Company.

The claim could only be made under the third class provided for under Section 709 of the Revised Statutes, and in order to be considered, must have been specially set up or claimed by the Iron Cliffs Company itself.

> Water Power Co. vs. Street Ry. Co., 172 U. S., 475 at 487, 488.
> Yazoo &c. Ry. Co. vs. Adams, 180 U. S., 1 at 14.
> Sully vs. National Bank, 178 U. S., 289 at 297.

To specially set up the Federal question here asserted requires that it appear by the Record that the Iron Cliffs Company set up the claim that by failure to make the Pioneer Iron Company a party, the Iron Cliffs Company would be deprived of its property without due process of law because it was the

owner of capital stock of such Company. That such claim was made by the Iron Cliffs Company cannot be left to inference by this Court.

Kipley vs. Illinois, 170 U. S., 182 at 186.
Michigan Sugar Co. vs. Michigan, 185 U. S., 112 at 113, 114.
Oxley Stave Co. vs. Butler County, 166 U. S., 648 at 654.
Union Mutual Life Ins. Co. vs. Kirchoff, 169 U. S., 103 at 109, 110.
Levi vs. Superior Court of San Francisco, 167 U. S., 175 at 177, 178.
Keokuk &c. Co. vs. Illinois, 175 U. S., 626 at 634.
Dewey vs. DesMoines, 173 U. S., 193 at 198, 199, 200.
Chapin vs. Fye, 179 U. S., 127 at 129.
Spies vs. Illinois, 123 U. S., 131 at 181.
French vs. Hopkins, 124 U. S., 524.
Chappell vs. Bradshaw, 128 U. S., 132 at 133, 134.
Baldwin vs. Kansas, 129 U. S., 52 at 56.
Leeper vs. Texas, 139 U. S., 462 at 467.
Cook County vs. Calumet &c. Canal Co., 138 U. S., 635 at 653.
Brown vs. Massachusetts, 144 U. S., 573 at 579.
Kennard vs. Nebraska, 186 U. S., 304 at 308.

a. The Iron Cliffs Company made no objection that the Pioneer Iron Company was not made a party, and set up no claim to be a stockholder of the Company, or that it would be deprived of its property without due process of law The Bill of Complaint avered that the Iron Cliffs Company became the owner of all the stock of the Pioneer Iron Company in 1873, and that said stock since that time has been held in the names of different individuals for the use and purposes of the Iron Cliffs Company. (Record, p. 7. paragraph 12). This averment is distinctly denied by the Answer of the Iron Cliffs Company, Mather, and the Cleveland Cliffs Iron Company. (Record, p. 41, paragraph 11.) After, in this manner, denying ownership of said stock, this answer of the Iron

Cliffs Company, and Mather, and Cleveland Cliffs Iron Company, says, (Record, p. 44).

"And these defendants further answering say they have no personal interest in any of the matters set forth in said Bill, except as they *or some of them*, may be stockholders of said Pioneer Iron Company or as an officer or agent thereof." *This remains the answer of the Iron Cliffs Company.* It certainly was not then intended by that Company to set up any Federal question on the ground that it was a stockholder of or interested in the Pioneer Iron Company and that such Company was not a party to the suit, and that the Iron Cliffs Company would be deprived of its property without due process of law. *It afterwards, and after the proofs were taken in the suit, joined with Mather in making amendments to this answer upon some points of the Answer, but omitted to join with him in setting up this Federal question. This fact shows affirmatively and distinctly that it did not intend to set up such claim.* (Record, pp. 51, 52).

b. The opinion of the Supreme Court of Michigan does not show that any Federal question was "specially set up or claimed" by or on behalf of the Iron Cliffs Company. The statement of the opinion of the Court is only this, (Record, p. 569): "2. It is also urged as a fatal objection to the maintenance of the Bill that the Pioneer Iron Company is not made a party."

Neither the ground of the objection, nor the party in whose behalf the objection is made, appears in the opinion. It is to be taken that the Court referred to the objection made by Mather's answer, since that is the only objection which appears in the Record that the Pioneer Iron Company is not made a party.

c. The authorities above cited do not permit jurisdiction of the Court to rest upon an *inference* that the objection was made by the Iron Cliffs Company, nor the *inference* that the objection was upon the ground that the Iron Cliffs Co. claimed to be a stockholder of the Pioneer Iron Company, and would be deprived of its property without due process of law because that Company was not made a party.

In order to maintain the jurisdiction upon the statement of the opinion of the State Court, *it is necessary that it should appear by the opinion* that the claim was set up as specially as it is required to be set up in the Bill or Answer in order that the claim by the Bill or Answer should confer jurisdiction. It is not sufficient that it should appear in the opinion that the Iron Cliffs Company objected that the Pioneer Iron Company was not made a party. It should appear that the objection was made upon a ground that presents a Federal question. See cases above cited and

Howard vs. Flemming, 191 U. S., 126 at 137.
Land and Water Co. vs. San Jose Ranch Co., 189 U. S., 177 at 179, 180.
Giles vs. Teasley, 193 U. S., 146 at 160.

d. The briefs presented to the State Court cannot be referred to for the purpose of showing that the Federal question was set up or claimed by the Iron Cliffs Company.

Sawyard vs. Denny, 158 U. S., 180 at 183.
Gibson vs. Chouteau, 8 Wall., 314.
Zadig vs. Baldwin, 166 U. S., 485 at 488.

e. The Plaintiffs in Error refer to the opinion of the Circuit Court from which appeal was taken to the State Supreme Court for the purpose of showing the jurisdiction of

this Court. Jurisdiction is limited by Section 709, U. S. Revised Statutes to review of the judgment or decree of the Supreme Court of Michigan, *the highest Court of the State.* The opinion of the Circuit Court is irrelevant upon the question before this Court.

Gregory vs. McVeigh, 23 Wall., 294 at 305, 306.
Fashnacht vs. Frank, 23 Wall., 416 at 420.
Atherton vs. Fowler, 91 U. S., 143 at 146.
Fisher vs. Perkins, 122 U. S., 522 at 525.

f. It is respectfully submitted that it clearly appears from the Record that the State Court based its decree upon the above facts as having been found by the Court, and that such facts having been so found are sufficient to sustain the decree. This Court, without inquiring into the soundness of the decision of the State Court, refuses to take jurisdiction in such cases.

Klinger vs. State of Missouri, 13 Wall., 257 at 263.
Murdock vs. City of Memphis, 20 Wall., 590 at 636.
Hale vs. Akers, 132 U. S., 554 at 564, 565.
Beaupre vs. Noyes, 138 U. S., 397 at 402.
DeSaussure vs. Gaillard, 127 U. S., 216 at 233, 234.
Dibble vs. Bellingham Bay Land Co., 163 U. S., 63 at 69.
Pittsburg &c. Co. vs. Cleveland I. M. Co., 178 U. S., 270 at 279.
Giles vs. Teasley, 193 U. S., 146 at 160.

In Klinger vs. State of Missouri, 13 Wall., at 263, the Court uses this language: "The rules which govern the action of this Court in cases of this sort are well settled. Where it appears by the Record that the judgment of the State Court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent

ground; and it appears that the Court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this Court will not take jurisdiction of the case, *even though it might think the position of the State Court an unsound one.*"

In De Saussure vs. Gaillard 127 U. S., at 233, 234, the above quotation from Klinger vs. Missouri is repeated, and the Court adds: "And it has been repeatedly decided, under Section 709 of the Revised Statutes, that to give this Court jurisdiction of the Writ of Error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, *or that the judgment as rendered could not have been given without deciding it.*"

In Murdock vs. City of Memphis, 20 Wall., 590, at 636, the Court by Mr. Justice Miller, says: "If it (the Federal question) was erroneously decided against Plaintiff in Error, then this Court must further inquire whether there is any other matter or issue adjudged by the State Court which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case the judgment must be affirmed *without inquiring into the soundness of the decision on such other matter or issue.*"

In Hale vs. Akers, 132 U. S., at p. 564, the same statement of the law is repeated.

In Pittsburg &c Co. vs. Cleveland I. M. Co., 178 U. S., at 279, the facts are pointed out upon which, as appears by the opinion of the Supreme Court of Michigan, the decision of the Court was based; among which were facts constituting an

estoppel. The Court says: "But again, *and whatever the error in that conclusion* (we do not assert there was any) the Court decided, as an independent ground of estoppel, that plaintiff was guilty of laches, and that was sufficient to sustain its judgment."

II.

No Federal question is presented by the Record.

The claim that there is a Federal question is put upon the ground that William G. Mather is a stockholder in the Pioneer Iron Company, and that if any decree shall be made in the suit, declaring a forfeiture or termination or expiration of the ninety-nine year lease, or in any way affecting the rights of the Pioneer Iron Company thereunder, Mather, as such stockholder, will be deprived of his property without due process of law because said Pioneer Iron Company is not made a party to the suit. (Record, p. 52).

The point is, that if the decision of the State Court in construing the lease, or by finding of the facts in relation to Mather's conduct, results in a decree affecting the rights of the Pioneer Iron Company, Mather, being a stockholder, will be deprived of his property without due process of law because the Pioneer Iron Company is not a party to the suit.

First. Due process of law does not require that the Pioneer Iron Company be made a party in order that the Court may determine the rights of Mather, and the character of the acts of Mather, which are involved in the suit.

The case made by the Bill is that the lease permits no mining to be done by anyone other than the Pioneer Iron Com-

pany, *and by it* only for the limited purpose of converting such ore as it may mine into merchantable iron in its own furnaces. That the Pioneer Iron Company does not itself mine any ore, *but Mather, in order that he may get the benefit of the provisions of the lease, fraudulently acts under the cover of the name of that Company, and mines the ore for his own use and benefit.*

Mather denies this charge, and says the Pioneer Iron Company does the mining, and that he is acting in the capacity of its agent in doing the mining. The case made by the Bill is to try and to determine *the character of the acts of Mather*, viz.: to determine that the lease does not permit any mining by anyone besides the Pioneer Iron Company, and that Mather is mining ore in violation of its provisions. This requires the Court to determine whether the terms of the lease permit Mather to mine under it and whether he is attempting to mine under it in the manner charged. It is to construe the lease, and decide whether under its terms Mather is authorized to do the acts which the Court finds Mather engaged in doing. In other words, the Court determines the extent of the authority or right which Mather has under the particular instrument *which he sets up and claims gives authority for his acts. It is his own personal acts and the authority which he claims for his acts which are involved.*

Due process of law is observed when the party charged is duly brought into a Court which has jurisdiction of the subject of the suit, and of the party, and he is given opportunity to defend against the charge made against him, by the ordinary course of proceedings which are adopted in the State Court. The proceedings of the State Court are determined by the legislature or judiciary of the State, and so long as the

requirements are observed that jurisdiction of the subject of the suit and of the party charged, is obtained, and opportunity is secured to him for making defence, errors committed by the Court in the proceedings are not subject to review by this Court.

Iowa Street Ry. Co. vs. Iowa, 160 U. S., 389 at 393.
Simon vs. Craft, 182 U. S., 427 at 436, 437.
Louisville & Nashville R. Co. vs. Schmidt, 177 U. S., 230 at 236.
Allen vs. Georgia, 166 U. S., 138 at 140.
Central Land Co. vs. Laidley, 159 U. S., 103 at 112.
York vs. Texas, 137 U. S., 15 at 20.
Walker vs. Sauvinet, 92 U. S., 90 at 92.
Kennard vs. Louisiana ex rel. Morgan, 92 U. S., 480 at 481 and 483.
Davidson vs. New Orleans, 96 U. S., 97 at 105.
Caldwell vs. Texas, 137 U. S., 692 at 697 and 698.
Hagar vs. Reclamation District, 111 U. S., 701 at 708.
New Orleans Redemption Co. vs. New Orleans, 180 U. S., 320 at 326, 328, 331, 332.
Arrowsmith vs. Harmoning, 118 U. S., 194 at 195, 196.
Dent vs. W. Virginia, 129 U. S., at 114.
Holden vs. Hardy, 169 U. S., 366 at 385 to 388.
Marchant vs. Pennsylvania R. R. Co., 153 U. S., 380 at 385, 386.

In Iowa Street Ry. Co. vs. Iowa, 160 U. S., at 389, suit was by mandamus to compel the Railway Company to operate a leased portion of its land. Judgment was rendered against the Company. In the Writ of Error to the State Court it was contended by the Company that the action for mandamus could not be lawfully brought to compel it to operate such portion of its road until its legal duty to do so had been determined by verdict of the jury. The Court says, p. 393: "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process

legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the State Court prosecuted or determined by one form of action instead of by another. It is also equally evident, provided the form sanctioned by the State law *gives notice and affords an opportunity to be heard* that the mere question of whether it was by motion or ordinary action in no way rendered the proceeding not due process of law within the Constitutional meaning of those words. Whether the Court of last resort of the State of Iowa properly construed its own Constitution and laws in determining that the summary process under those laws was applicable to the matter which it adjudged was purely the decision of a question of State law, binding upon this Court. Mere irregularities in the procedure, if any, were matters solely for the consideration of the judicial tribunal within the State, empowered by the laws of the State to review and correct errors committed by its Courts. Such errors affect merely matters of State law and practice, in no way depending upon the Constitution of the United States or upon any act of Congress. * * * It is manifest that it was never contemplated by the framers of the Constitution that this Court should sit in review, as an Appellate Court, of such a question as that presented in the Record of the case at bar, viz., whether or not the highest Court of the State erred in holding that it could rightfully determine from the statements in the pleadings filed by both parties to a controversy pending before it that the averments of an answer set forth no defence to the claim of the plaintiff."

In Simon vs. Craft, 182 U. S., 427, the Court says, p. 436: "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things and not by mere form."

Again on p. 437, the Court says: "But the due process clause of the Fourteenth Amendment does not necessitate that the proceedings in a State Court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted, and an opportunity afforded to defend against it. Louisville & Nashville R. Co. vs. Schmidt, 177 U. S., 230, 236, and cases cited. *If the essential requisites of full notice and an opportunity to defend were present, this Court will accept the interpretation given by the State Court as to the regularity under the State Statute of the practice pursued in the particular case.*"

In Louisiana & Nashville R. Co. vs. Schmidt, 177 U. S., 230 at 236, the Court says: "It is no longer open to contention that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in State Courts or regulating practise therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law *the person condemned has had a sufficient notice and adequate opportunity has been afforded him to defend.* Iowa Central Ry. Co. vs. Iowa, 160 U. S., 389; Wilson vs. N. Carolina, 169 U. S., 586."

In Allen vs. Georgia, 166 U. S., 138, in which the plaintiff in error had been convicted and sentenced for the crime of murder, the Court uses this language, p. 140: "To justify any interference upon our part it is necessary to show that the course pursued has deprived, or will deprive, the plaintiff

in error of his life, liberty or property without due process of law. Without attempting to define exactly in what due process of law consists it is sufficient to say that, if the Supreme Court of the State has acted in consonance with the Constitutional laws of the State and its own procedure, it could only be in very exceptional circumstances that this Court would feel justified in saying that there had been a failure of due legal process. *We might ourselves have pursued a different course in this case, but that is not the test.* The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensible to the liberty of the citizen, to justify our interference."

The above statement is quoted with approval in Wilson vs. N. Carolina 169 U. S., at p. 593, and in Hovey vs. Elliott, 167 U. S., at p. 443.

In Central Land Co. vs. Laidley, 159 U. S., 103 at 112, the Court, by Mr. Justice Gray, says: "*When the parties have been fully heard in the regular course of judicial proceedings* an erroneous decision of the State Court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States."

In York vs. Texas, 137 U. S., 15, by statute the defendant in suit, if he asks the Court to determine any question, even that of service, submits himself wholly to its jurisdiction. Elsewhere than in Texas he gets an opinion of the Court before deciding his own action. In Texas he takes all the risk himself. If the service be in fact insufficient, all subsequent proceedings, including the formal entry of judgment are void; if sufficient they are valid. The Court says, p. 20: "And the question is, whether under the Constitution of the United States the defendant has an inviolable right to have this ques-

tion of the sufficiency of the service decided in the first instance and alone. The Fourteenth Amendment is relied upon as invalidating such legislation. That forbids a State 'to deprive any person of life, liberty or property without due process of law.' And the proposition is, that the denial of a right to be heard before judgment simply as to the sufficiency of the service operates to deprive the defendant of liberty or property. But the mere entry of a judgment for money, which is void for want of proper service, touches neither. It is only when process is issued thereon if the judgment is sought to be enforced that liberty or property is in present danger. If at that time of immediate attack protection is afforded, the substantial guarantee of the amendment is preserved, and there is no just cause of complaint. *The State has full power over remedies and procedure in its own Courts, and can make any order it pleases in respect thereto, provided that substance of right is secured without unreasonable burden to parties and litigants.*"

In Church vs. Kelsey, 121 U. S., 282, the question was presented whether the State of Pennsylvania by giving jurisdiction to a Court of Equity of a suit brought by an owner of an equitable interest in land to establish his rights against the holder of a legal title, deprives any person of life liberty or property without due process of law, because the holder of the legal title is deprived of the right to a trial by jury which he would have by suit at law. Deciding against this contention, the Court says, p. 283: "Certainly the provisions of the Constitution referred to cannot have the affect of taking away from the States the power of giving a Court of Equity jurisdiction in cases requiring equitable relief. It may be true that in Pennsylvania 'equity powers have been doled out to the Courts by the legislature with a sparing hand,' but there is nothing in the Constitution of the United States which requires that this should always be so."

In Walker vs. Sauvinet, 96 U. S., 90, Walker was sued in a civil action, and demanded a trial by jury. The cause was thereupon tried by a jury, who failed to agree. Then upon motion of the plaintiff's counsel, the Court proceeded to decide the case under the provisions of the Statute of the State of Louisiana authorizing the Court under such circumstances to decide the suit, and render judgment. Judgment was rendered against Walker for $1,000, and was affirmed by the Supreme Court of the State. The question was whether, under the provision that no person shall be deprived of life, liberty or property without due process of law, a party could, in such case, be deprived of the right to a trial by jury. In sustaining the validity of the law, the Court, by Mr. Chief Justice Waite, says, p. 92: "A State cannot deprive a person of his property without due process of law, but this does not necessarily imply that all trials in State Courts affecting the property of persons must be by jury. This requirement of the Constitution is met if the trial is had according to the settled course of judicial proceedings. Murrays Lessee vs. Hoboken L. & I. Co., 18 How., 280. Due process of law is process due according to the law of the land. *This process in the States is regulated by the law of the State.*"

In Kennard vs. Louisiana ex rel. Morgan, 92 U. S., 480, Kennard had been appointed Associate Justice of the Supreme Court of Louisiana. Before the expiration of the term for which he was appointed, as claimed by him, his title to the office was tried under proceedings authorized by the Statute of the State, which authorized judgment to be rendered without a trial by jury. In deciding the case, the Court by Mr. Chief Justice Waite, says, p. 481: "The question before us is, not whether the Courts below, having jurisdiction of the case and the parties, have followed the law, but whether the law, if followed, would have furnished Kennard the protec-

tion guaranteed by the Constitution. *Irregularities and mere errors in the proceedings can only be corrected in the State Courts. Our authority does not extend beyond an examination of the power of the Courts below to proceed at all.*"

Again the Court says, p. 483, after referring to the provisions of the statute under which the proceedings were had. "From this it appears that ample provisions has been made for the trial of the contestation before a Court of competent jurisdiction; for bringing the party against whom the proceeding is had before the Court, and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defence; for the deliberation and judgment of the Court; for an appeal from this judgment to the highest Court of the State, and for hearing and judgment there. *A mere statement of the facts carries with it a complete answer to all the Constitutional objections urged against the validity of the act.*"

In Davidson vs. New Orleans, 96 U. S., 97, the Court uses this language, p. 105: "Under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, *he has, by the laws of the State, a fair trial in a Court of Justice, according to the modes of proceeding applicable in such a case.*"

In Caldwell vs. Texas, 137 U. S. 692, Caldwell was tried for murder under an indictment which he claimed was not due process of law. In deciding the case, Mr. Chief Justice Fuller says, p. 697: "By the Fourteenth Amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive a particular person or class of persons of equal and impartial justice under the law. Law, in its regular course of administration through Courts

of Justice is due process, and when secured by the law of the State, the Constitutional requisition is satisfied. 2 Kent Comm., 13. And due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

Again on p. 698, the Court says: "The plaintiff in error was not denied the equal protection of the laws, nor deprived of the process due by the law of the land. The Constitution of Texas secured to him the right to demand the nature and cause of the accusation against him, and the State Court determined, as was its province, that this demand was satisfied by the indictment in question. His objections were in effect to the technical sufficiency of the indictment, but not that his rights had been determined by any other rules than those applied to the rest of the community, *nor that the Court had done more than commit errors in a disposition of the subject within its jurisdiction.*"

In Hagar vs. Reclamation District 111 U. S., 701, the Court says, p. 708: "Undoubtedly where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, *which imply that the party to be affected shall have notice and an opportunity to be heard*, so, also, where title or possession of property is involved."

In Arrowsmith vs. Harmoning, 118 U. S., 194, the Court says, p. 195: "The constitutional provision is, 'nor shall any State deprive any person of life, liberty or property without due process of law.' Certainly a State cannot be deemed guilty of a violation of this constitutional obligation simply because one of its Courts while acting within its jurisdiction, has made an erroneous decision. The legislature of a State

performs its whole duty under the Constitution in this particular when it provides a law for the government of its Courts while exercising their respective jurisdictions, which, if followed, will furnish the parties the necessary constitutional protection. All after that pertains to the Courts, and the parties are left to the appropriate remedies for the correction of errors in judicial proceedings."

In the case at bar there is no question of the jurisdiction of the State Court in respect to the subject of the suit, or in respect to Mather in person, nor of his full opportunity to make his defence whatever the charge against him may be. All the requirements of due process of law were observed in the trial in respect to Mather and his rights.

The question whether in the proceedings in the suit after full jurisdiction had been acquired, the State Court should have required that the Pioneer Iron Company be made a party to the suit in order to determine, not the right of the Pioneer Iron Company, but in order to determine the rights of Mather does not involve due process of law. Whether the Pioneer Iron Company was a necessary party in order that the Court might adjudge the rights of Mather in respect to the issues presented in the case *was to be determined upon general principles of equity jurisprudence relating to the proceedings of the Court, and was to be determined by the State Court in view of all the circumstances presented to the Court, and of the decree which might be rendered.* The decision of the State Court upon that question is not subject to review.

Story's Eq. Pl., Sections 72, 75, 76c, 135a, 136, 242.
Elmendorfer vs. Taylor, 10 Wheat., 152 at 166, 167.
California vs. Southern Pacific Co., 157 U. S., 229 at 256, 257.
Minnesota vs. Northern Securities Co., 184 U. S., 199 at 235.

In Story's Eq. Pl., after stating the general rule of Courts of Equity, requiring that all persons materially interested in the subject matter of the suit are to be parties to it, in Section 76c says: "The truth is, that the general rule in relation to parties, does not seem to be founded on any positive and uniform principle; and therefore it does not admit of being expounded by the application of any universal theorem, as a test. It is a rule founded partly on artificial reasoning partly in considerations of convenience, partly in the solicitude of Courts of Equity to suppress multifarious litigation, and partly in the dictate of natural justice, that the rights of persons ought not to be affected in any suit, without giving them an opportunity to defend them. Whether, therefore, the common formulary be adopted, that all persons materially interested in the suit, or in the subject of the suit, ought to be made parties, or that all persons materially interested in the object of the suit ought to be made parties, we express but a general truth in the application of the doctrine, which is useful and valuable indeed as a practical guide, but is still open to exceptions, and qualifications, and limitations, the nature and extent and application of which are not and cannot, independently of judicial decision, be always clearly defined."

In Section 135a, the author says: "Besides, it is to be considered; that the general rule requiring all persons in interest to be made parties to the suit is, in most cases, not in any just sense, a right of the parties brought before the Court, but rather a rule prescribed by Courts of Equity to themselves in the exercise of their jurisdiction, founded upon their own notions of public policy, or public convenience. It is, in a great measure, a rule of discretion, founded in the anxiety of those Courts to do justice among all the parties, having an interest in the subject matter or the object of the suit, whether that interest be mediate or immediate, present or future, for

the purpose of suppressing future controversy and litigation. The rule is useful when applied to its proper, legitimate purposes."

In Elmendorfer vs. Taylor, 10 Wheat., 152, Chief Justice Marshall, delivering the opinion of the Court upon this subject, says, pp. 166, 167: "This objection does not affect the jurisdiction, but addresses itself to the policy of the Court. Courts of Equity require that all the parties concerned in interest shall be brought before them, that the matter in controversy may be finally settled. *This equitable rule, however, is framed by the Court itself, and is subject to its discretion.* It is not, like the description of parties, an inflexible rule, a failure to observe which turns the party out of Court because it has no jurisdiction over his cause; but being introduced by the Court itself, for the purposes of justice, is susceptible of modification for the promotion of those purposes."

In California vs. Southern Pac. Co., 157 U. S., 229, the State of California, by its Attorney General by leave of the Court exhibited its Bill in Equity in the Supreme Court of the United States. The question was presented in the case of necessary parties to the suit, and referring to the proceedings taken in the case upon that subject, Mr. Chief Justice Fuller, delivering the opinion of the Court, says, p. 256: "The matter was thus left to the consideration of counsel as to whether indispensable or necessary parties had not been joined, while if the case was permitted to go to a hearing the Court would then be able to dispose of it understandingly. We may add, that, that even if reference could be made to the 47th rule in Equity by way of analogy, that rule does not apply when indispensable parties are lacking, *and that in respect of necessary parties the cause may or may not be proceeded in without them, as the Court may determine in the exercise of sound dis-*

cretion. We have no hesitation in holding that when an original cause is pending in this Court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

Second. The Pioneer Iron Company not being made a party to the suit, cannot be bound by the decree, and its rights will not be affected in any manner by the decree.

Story's Eq. Pl., Section 75.
Finley vs. United States Bank, 11 Wheat., 304 at 306, 307.
New Orleans Water Works vs. New Orleans, 164 U. S., 471 at 480.

Third. The Supreme Court of Michigan places the decision that the Pioneer Iron Company is not a necessary party upon the ground that the case presented for the determination of the Court is the charge that the Pioneer Iron Company, whether it be regarded as dead, or as still existing, is used as a "dummy" by the Plaintiffs in Error, and its name is employed by them as a cover for their acts done by themselves for their own benefit. (Record p. 569.)

This decision rests upon the principles of general law of Equity jurisprudence as applied to the facts with which the Court has to deal. The Court also holds upon this subject that the objection should have been raised by the Plaintiffs in Error by demurrer, because the facts upon which the objection is based are apparent upon the face of the Bill.

A decision upon this point is based upon the question of proper proceedings and practice of the Court. Clearly, the judgment of the Court that the Pioneer Iron Company is not a necessary party does not present any Federal question and is not subject to review.

Murdock vs. City of Memphis, 20 Wall., 590 at 636 and 638.
Avery vs. Popper, 179 U. S., 305 at 315.
Rio Grande R. Co. vs. Vinette, 132 U. S., 554 at 564.
Beaupre vs. Noyes, 138 U. S., 397 at 401, 402.
Telluride Power Co. vs. Rio Grande Ry. Co., 175 U. S., 639 at 647.

In Murdock vs. City of Memphis, 20 Wall., 638, Mr. Justice Miller in delivering the opinion of the Court, uses this language, p. 638: "The claim of right here set up is one to be determined *by the general principles of equity jurisprudence*, and is unaffected by anything found in the Constitution, laws or treaties of the United States. Whether decided well or otherwise by the State Court, we have no authority to inquire."

In Avery vs. Popper, 179 U. S., at 315, Mr. Justice Brown delivering the opinion of the Court, uses this language: "This was a question either of local law *or of general law*. If of local law, of course the decision of the Supreme Court of Texas is binding upon us. If of general law, as it involves no Federal element, it is equally binding in this proceeding, since only Federal rights are capable of being raised upon writs of error to State Courts. Conceding that, if the question had arisen on appeal from a Circuit Court of the United States, we might have come to a different conclusion, it by no means follows that we can do so upon a Writ of Error to a State Court, whose opinion upon a question of general law is ~~now~~ not reviewable here."

It is respectfully submitted that the Pioneer Iron Company was not a necessary party to the suit in order that due process of law be observed by the Court in deciding upon the case made against Mather.

III.

The Federal question claimed by the Plaintiffs in Error cannot arise without a determination first of the fact that the Pioneer Iron Company was reorganized.

First. It is an admitted fact that the Pioneer Iron Company was organized on the 3rd of April, 1857, for the period of thirty years. (Bill, Record, pp. 1 and 2; Exhibit B, pp. 16, 17; Answers Record, pp. 30 and 40).

The Bill avers that the charter of the Pioneer Iron Company expired by limitation April 2, 1887. This was made an issue in the case. (Bill, para. 13 p. 7; Answer, para. 11, pp. 41, 42).

The Court explicitly decided that "the charter of the Pioneer Iron Company expired by limitation April 2, 1887." (Record, p. 576).

The authorities are uniform that upon the expiration of the time limited in the charter for the existence of the corporation, the corporation becomes *ipso facto* dissolved and ceases to exist.

2 Beach on Private Corporations, p. 1216, Section 780.
2 Clark & Marshall on Private Corporations, p. 839, Section 305.

2 Cook on Corporations, p. 1384, Section 628 (Fifth Ed.).
Swan Land and Cattle Co. vs. Frank, 148 U. S., 603 at 611.
National Bank vs. Colby, 21 Wall., 609 at 615.
Sturges vs. Vanderbilt, 73 N. Y., 384 at 390.
People vs. Walker, 17 N. Y., 502 at 503.
Mason vs. Perkins, 73 Mich., 303 at 313, 320, 321.
Agricultural Society vs. Housemon, 81 Mich., 609 at 614.

No suit can be maintained against a corporation after its dissolution.

National Bank vs. Colby, 21 Wall., 609 at 615.
Fitts vs. National Life Association, 130 Ala., 413.
Thornton vs. Marginal Freight Ry., 123 Mass., 32 at 34.
Marion Phosphate Co. vs. Perry, 74 Fed., 425 at 427 (C. C. A.).

Second. The Plaintiffs in Error, as their defence, set up a reorganization of the Pioneer Iron Company, and aver its existance as a valid and existing corporation. (R., p. 51.) The decision of the State Court in reference to this defence is that, at the time the Company was organized and at the expiration of its charter, the Constitution of the State expressly prohibited the organization of corporations beyond the period of thirty years, and no provision existed either by the Constitution or by Statute, when the Company was organized or when its charter expired, authorizing a reorganization of corporations which had expired by limitation. The language of the Court is as follows, (Record, p. 576): "The charter of the Pioneer Iron Company expired by limitation April 2 1887. The Constitution, at the date of its organization and at the expiration of its charter, expressly prohibited the organization of corporations beyond the period of thirty years. No provision then existed, either by the Constitution or by Statute,

authorizing the reorganization of corporations which had expired by limitation."

This decision in respect to the Constitution and law of the State is controlling in this suit.

Town of Ottawa vs. Perkins, 94 U. S., 260 at 267.
Post vs. Supervisors, 105 U. S., 667 at 669.
Burgess vs. Seligman, 107 U. S., 20 at 33.
Warburton vs. White, 176 U. S., 484 at 496.
Avery vs. Popper, 179 U. S., 305 at 315.

The State Court refers to the fact that in 1889, (which was two years after the expiration of the charter of the Pioneer Iron Company), the State Constitution was amended, and a statute was passed for the reorganization of corporations whose terms had expired by limitation. But the Court withholds decision in reference to the effect of the statute, the validity of the reorganization of the Company, or whether the Company was in a position to avail itself of the statute, and the effect upon the ninety-nine year lease should the reorganization be held to be valid. (Record, p. 576).

It is very clear that these are questions which arise exclusively under the local laws of the State, and until decision is made upon them it cannot appear that the Pioneer Iron Company exists as a corporation and could be made a party to the suit.

This Court will not find a fact not determined by the State Court in order to determine that a Federal question is presented, and therefore, the Court will not, in this case, inquire and determine whether under the Constitution and Statutes of Michigan the Pioneer Iron Company could be reorganized, and

also whether under proceedings attempted for the purpose a reorganization was accomplished.

Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639 at 647.
Dower vs. Richards, 151 U. S., 658 at 663.
Israel vs. Arthur, 152 U. S., 355 at 362.

In Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639, the right of the Plaintiffs in Error was claimed under Section 2339 of the Revised Statute, and depended upon the priority of possession of land. The opinion of the Supreme Court of Utah, whose judgment was under review, stated that the Court was "unable to find from a preponderance of the evidence in the record, that the defendants, or either of them, had appropriated the land in dispute, and that they were, or that either of them was, in actual possession of it when the plaintiff located its right of way, took actual possession and engaged in grading it."

This Court in delivering the opinion, says, p. 647: "But the difficulty in this case is that, before it could be said that any right or title under a statute of the United States had been denied, it was necessary to establish as a question of fact priority of possession on the part of the Telluride Company, as well as conformity to local customs, laws and decisions. *These were local and not Federal questions. The jurisdiction of this Court in this class of cases does not extend to questions of fact or of local law, which are merely preliminary to, or the possible basis of, a Federal question.*"

Third. The Pioneer Iron Company was not reorganized so as to continue to hold the ninety-nine year lease after the expiration of the charter, or so as to be successor of the Pioneer Iron Company to its rights under the ~~charter~~ lease.

The contention of the Plaintiffs in Error is that the Pioneer

Iron Company was not dissolved at the expiration of the period limited by its charter, but, on the contrary, continued to exist for the period of three years thereafter by virtue of the Statute of the State which provides as follows: "All corporations whose charters will expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established."

This Statute was enacted in 1838, and was incorporated in the Revised Statutes of 1846, and appears in the subsequent compilations of the Statutes as follows: R. S. 1838, p. 229, Sec. 7; R. S. 1846, p. 212, Sec. 8; 1st Comp. Laws 1857, p. 701, Sec. 2150; 1st Comp. Laws 1871, p. 1150, Sec. 3435; 1st Comp. Laws 1882, p. 1244, Sec. 4867; 3rd Comp. Laws 1897, p. 2627, Sec. 8534.

When this Statute was adopted in 1838, and when it was incorporated in the revision of 1846, there was no provision of the State Constitution limiting the period for which corporations might be formed, and there was no general statute for the organization of corporations. Corporations were formed under special acts of the legislature, by each of which acts the period for which the corporation might be formed was determined.

The Constitution of Michigan adopted in 1851, Art. XV, Sec. 1, provided that, "Corporations may be formed under general laws but shall not be created by special act except for municipal purposes." Sec. 10 of said Art. XV is as fol-

lows: "No corporation, except for municipal purposes, or for the construction of railroads, plank roads and canals, shall be created for a longer term than thirty years."

1st Comp. Laws, 1857, pp. 70, 71.

This provision remained unchanged until amended in 1889, over two years after the expiration of the charter of the Pioneer Iron Company, which amendment is referred to in the finding of the State Court in this case. Laws of Michigan 1899, pp. 428, 429 and 455.

In 1853 a general Act for the formation of corporations was adopted, under which the Pioneer Iron Company was organized, and by Section 6 the Act provided in respect to corporations formed under it that "the term of its existence not to exceed thirty years." Laws of 1853, pp. 53, 54.

The general Statute of 1838 above quoted provided for the continuance of the corporations for the period of three years after their charters expired by limitation, and has never been reenacted by the legislature since the adoption of the Constitution of 1851. While it appears in the subsequent compilations, the compilations are not a re-enactment of the Statute. The effect of the provision of said Sec. 10 of Art. XV of the Constitution, as it stood prior to the amendment of 1899, was that, *at the expiration of the term of thirty years from the time of the formation of the corporation, the corporation became dissolved for all purposes and ceased to exist. It was dead and out of the way as though it had never been.*

The effect of said provision of the Constitution was also to limit the application and force of said three years statute *to corporations which, by their articles of association, were formed for less than thirty years.* The Statute would apply to and continue in existence for three additional years, those corpora-

tions whose charters did not provide for a term exceeding twenty-seven years, but the term of the charter and the three years added by Statute could not extend the existence of the corporation beyond the period of thirty years provided by the Constitution.

This must clearly be the intention of the Constitution. It is the construction given to the Constitution by the Supreme Court of the State, and this construction does not leave the question open to argument here.

> Mason vs. Perkins, 73 Mich., 303 at 313, 314, 319, 321.
> Mining Co. vs. Secretary of State, 82 Mich., 573 at 575.
> Mason vs. Pewabic Mining Co., 66 Fed., 391 at 394 (C. C. A.).

In Mason vs. Perkins, 73 Mich., 303, the Pewabic Mining Company was formed April 4 1853, for the term of 30 years under said statute of 1853. In 1882 a statute was passed authorizing the continuance of the existence of a corporation for a further term not exceeding thirty years by action to be taken by the stockholders *prior to the termination of the corporation by limitation.* This Act was amended in 1887, authorizing the action of the stockholders to be taken for such extension *at any time before the dissolution of the corporation became complete.*

Proceedings were taken under these statutes to extend the life of the Pewabic Mining Company under the claim that a corporation continued in existence after the termination of the thirty years limited in its charter. The Court considered said three years statute in connection with said Sec. 10 of Art. XV of the Constitution, and held that the corporation ceased to exist at the expiration of its charter. (See pp. 313, 314.) The Court says, p. 319: "Let us suppose that the Constitution had not prohibited the granting of charters by special act, but did contain the restriction embraced in Sec. 10.

What would have been its effect upon the power of the legislature? Such declaration that no corporation, except, &c. 'shall be created for a longer time than thirty years' is equivalent to a mandate that thus long and for no longer time shall any corporation be created. Is not such mandate a direct and positive limitation upon the power of the legislature to extend the time or renew the corporate existence beyond that term? What consequences are expected to follow upon the expiration of such limitation? Naturally, the corporation becomes dissolved, and incapable of longer exercising corporate functions in pursuing and carrying on its business. Its business is to be closed out, its obligations paid, and the assets distributed among its stockholders. These are the results which naturally follow from the mandate of the Constitution, and indicate the intent of the instrument. Would a special act of the legislature, were such act permissible, which granted to a corporation an existence of thirty years, and contained a provision that from and after the expiration of said term it should continue a further term of thirty years, with all the rights, privileges and immunities therein granted, without change of corporate or individual rights, stock or property, be a violation of this provision of the Constitution, so far as the term exceeded thirty years? It seems too plain for argument that it would. What the legislature is prohibited from doing directly they are prohibited from doing indirectly."

Again on p. 321, the Court says: "The design of the framers of the Constitution was to place all purely private corporations on an equal footing, and to fix a limit of time beyond which they should not continue to exist. This design would be frustrated if authority could be given them to perpetuate their existence by a resolution adopted by a vote of a majority of two-thirds of the capital stock *or by any other device.* In considering the question thus far we have treated the statutes

of 1882 and 1887 as expressing an intention to renew corporations which were originally created for the full limit of thirty years. It must be admitted that there is language used in the statute which would justify the inference that it was intended to apply to such corporations. But it is not necessary to give the statutes this construction. And we are bound to give to these enactments such construction, if practicable, as will preserve their force and validity, rather than to avoid them or render them nugatory. The period for which corporations shall be formed is left with the corporators within the Constitutional limit. There probably are corporations, and the writer of this opinion has known of some, which have not organized for the full period of thirty years. *As applied to such corporations, the Statute within the Constitutional limits is valid, and would authorize them to renew their corporate existence for the remainder of the Constitutional limitation.*"

The suit was to determine the rights of the respondents to renew the mining company under the said statutes, and the Court rendered a judgment of ouster against the defendants.

The only other case in which the application of said three years statute has come before the Court is Bewick vs. Alpena Harbor Company, 39 Mich., 700.

A canal company had been formed under a general statute passed in 1861, authorizing the formation of canal companies. In 1875 the statute of 1861 was repealed with the proviso that all corporations legally formed and existing under said Act of 1861 should continue to have legal existence for the purpose only of closing up their business in accordance with the provisions of Chap. 130 of Comp. Laws of 1871, which chapter contained the provisions of said three years statute. The Court held that said three years statute applied to said Alpena Harbor Company. The thirty years from the formation of the Company under said Act of 1861 could not have expired

until 1891. Adding the three years to the date of the repeal of the charter in 1875 would extend the existence of the corporation only to the year 1878.

In the light of the decision in Mason vs. Perkins had the three years statute enacted in 1838 not existed at the time the Constitution of 1851 was adopted, and the statute of 1853 under which the Pioneer Iron Company was organized had provided that corporations might be formed for thirty years, and that at the expiration of the thirty years the corporation should continue for three years in addition, for the purpose of "prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock," the provision for the continuance for the three additional years would have been held invalid.

If such a provision would be good for three years, a like provision would be good for any number of years which the legislature might determine upon. The powers of the corporations under such provision are:

First: To continue to be a corporation.

Second: To prosecute and defend suits.

Third: To gradually settle and close their concerns.

Fourth: To dispose of and convey their property.

Fifth: To divide their capital stock. Under such provisions, a corporation, if a mining company, owning a mine, could carry on the work of extracting the ore from the mine and selling it, or manufacturing it for the purpose of selling it, until the mine should be exhausted, that would be strictly closing out its business, and the corporation would possess all the powers for that purpose that it possessed for carrying on its business before the expiration of the thirty years. The effect of the Constitutional provision would simply be to prevent the cor-

poration from adding to the business, and to its supplies for carrying on its business which it possessed at the end of the thirty years.

The decision of the Supreme Court of Michigan in *Mason vs. Perkins* determines the point in this case that the three years statute did not apply to the charter of the Pioneer Iron Company, and that at the expiration of its charter the Company came to its end and ceased to exist.

Upon the expiration of the Company the right to mine ore under the lease expired. This is the decision of the State Court in this case. (Record, pp. 573, 574 and 575.) That result follows also from the explicit terms of the lease. These terms are that Harvey conveys to the Pioneer Iron Company "certain rights and easements hereinafter described, subject to the provisions and limitations thereto annexed, in and upon certain pieces or parcels of land known and described as follows, to-wit:"

The lands are described, and then the instrument leases the mining rights as follows: "For the sole purpose of mining and quarrying at its own expense such ores and marble as may be found thereon, and subject to the provisions hereinafter mentioned, viz: Provided, it shall not quarry, mine or remove any ores on said lands except such as it shall actually convert into merchantable iron in its own furnaces or forges. * * * The rights and easements above mentioned shall descend to the corporate successors of the party of the second part, and not to its assigns." (Record, p. 19).

Language could not well be more explicit than is used by the lease to express the purpose to limit to the Pioneer Iron Company exclusively the right to mine ore, and also to limit the purpose for which the mining of ore might be done, and the amount or extent of the mining permitted to that Com-

pany. *The mining is to be done by the Company itself, to be actually converted by itself into merchantable iron in its own furnaces or forges.* All other parties, all other furnaces or forges, and all other purposes of mining are excluded, and the transfer of these privileges is forbidden.

The provision that "the rights and easements above mentioned shall descend to the corporate successors of the party of the second part" is employed to convey the idea that the rights granted by the lease to the Company were to continue in the corporation through all changes in the stockholders occuring during the life of the Company. It was the employment in the lease of the term "corporate successors" which was in use in the statutes of Michigan to express that the rights and franchises granted by the statute to the corporation were to continue in the corporation during the term of its charter through whatever changes might occur of its stockholders.

Laws of Michigan of 1848, p. 76, organizing the Copper Falls Mining Company.
Id. p. 150, organizing the Eagle Harbor Mining Company.
Id. p. 185, organizing the Quincy Mining Company.
Id. p. 337, organizing the Jackson Mining Company.
Laws of 1849, p. 62, organizing the Minnesota Mining Company.
Id. p. 85, organizing the Isle Royal Mining Company.
Id. p. 219, organizing the Native Copper Mining Company.
Id. p. 223, organizing the Phoenix Copper Company.
Id. p. 331, Organizing the Pittsburg and Isle Royal Mining Company.
Laws of 1850, p. [illegible] organizing the Cleveland Iron Mining Company.

In the case of each of the above Companies the Statute by the first section enacts that persons whose names are given "and others who shall become associated with them are hereby

constituted a body corporate by the name of" ——— giving the name and purpose of the corporation. The second section of the act says: "The said Company shall have corporate succession." It fixes the amount of capital stock and the amount of the shares. A separate section in each statute designates the time at thirty years during which the Company shall continue.

The act incorporating the St. Mary's Canal Company, Laws of 1847, p. 130, by the first section provides "that such persons as may hereafter become stockholders therein, shall be, and they are hereby declared, to be a body corporate and politic, under the name and style of the St. Mary's Canal Company, for the purpose of opening and constructing a canal navigation, with suitable locks and basins, around the fall of the St. Mary's, at the outlet of Lake Superior within the State of Michigan; and they, with their associates and successors, *shall so continue to have succession* for the period of fifty years from and after the passage of this act."

The use of the term "corporate successors" in General Law is employed to express the special feature of a corporation aggregate by which its rights and franchises continue in the corporation during the term prescribed by its charter.

1 Clark & Marshall on Private Corporations, Sec. 9, pp. 25 and 26.

2 Morawetz on Private Corporations, Sec. 1009, p. 969.

The plain intention of the lease is to give to the Pioneer Iron Company the right to mine the ore during the term of its life, and to provide that the right of mining shall not pass from that Company.

Fourth. The Pioneer Iron Company was not reorganized by proceedings which the statute requires to be taken in order to constitute a reorganization.

The statute under which the attempted reorganization was made was approved June 8, 1889 and provides as follows: "That it shall be lawful for any corporation heretofore or hereafter organized under the general laws of this State, for mining, smelting or manufacturing purposes, whose corporate term has expired or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least four-fifths of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Such meeting may be called in accordance with the By-Laws of the corporation and the laws of this State applicable to the same class of corporations whose term has not expired, by order of the directors *de facto* of the corporation. Upon the adoption of such resolution by a vote in person, or by proxy duly filed, of a majority of at least four-fifths of the capital stock, *it shall be the duty of the president and secretary of the stockholders' meeting to make, sign and acknowledge* duplicate articles of association, as in the case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed with the Secretary of State and with the County Clerk of the County where the corporation carries on its business, and be by both recorded in their respective offices, at the expense of said corporation * * * *Provided*, That no corporations, except corporations organized to carry on business in the Counties of Houghton, Keweenaw and Ontonagon, shall be permitted to reorganize hereunder which

for the past ten years have ceased to carry on the business for which they were organized.

Sec. 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired." (Laws of Michigan of 1889, p. 162 at 163).

The proceedings taken do not comply with the statute in this: The statute requires that the articles for reorganization shall be signed and acknowledged by the president and secretary of the stockholders' meeting, and be filed with the Secretary of State, and the County Clerk.

The articles were not signed by the President of the stockholders' meeting, nor were they acknowledged by anyone. The meeting of the stockholders was held October 7, 1889, of which meeting Alexander Maitland was President, he being elected chairman. (Record, pp. 298, 299, 300).

The articles of association adopted at the meeting are not signed by Alexander Maitland, the president of the meeting, and are not acknowledged by anyone. (Rec., p. 295, 296, 297).

Reorganization could be accomplished only by the signing and acknowledgment of the articles in compliance with the requirements of the statute. It is as though no action had been taken. There was no reorganization.

Doyle vs. Mizner, 42 Mich., 332 at 337, 338.
Carmody vs. Powers, 60 Mich., 26 at 29, 30.
Utley vs. Union Tool Co., 11 Gray, 139 at 141.
Stowe vs. Flagg, 72 Ill., 397 at 401.
Bigelow vs. Gregory, 73 Ill., 197 at 200, 201.
Kaiser vs. Lawrence Savings Bank, 56 Iowa, 104.

The question here is strictly whether such proceedings were taken in compliance with the statute as constituted a reorganization. Whatever view may be taken by the Courts elsewhere, the case of Doyle vs. Mizner, 42 Mich., 332 at 337, 338, establishes that under the law of Michigan, where the statute requires that in order to form a corporation the articles of association shall be acknowledged, no corporation is formed without the acknowledgment of the articles, as required by the statute. In that case an attempt was made to establish the existence of a corporation by offering in evidence articles of association which had not been acknowledged. The Court uses this language, p. 337: "Under our present Constitution no charters can be granted, and all private corporations must be organized under general laws, *and can only be valid when strictly conforming to all the conditions imposed upon their completion. The statute concerning manufacturing corporations expressly requires that the articles shall be acknowledged before some person authorized by the laws of this State to take acknowledgments of deeds.* Comp. L., Section 2839. And the previous Section required that before any such corporation should commence business, the articles should be filed with the Secretary of State and County Clerk. Section 2838. Apart from any circumstances which might bind parties by a recognition of an association *de facto*, it is very clear that so long as they refrain from acknowledging their articles these remain inchoate and imperfect. There is no statute which provides—as in case of deeds—for proving them without an acknowledgment, or for compelling their acknowledgment. The articles proved by the cross-examination of Doyle did not comply with the statute. * * * There was, therefore *no incorporation shown, and therefore for the purposes of this case none exists as a matter of fact.*"

If the Company expired April 2, 1887, it did not after that date own the ninety-nine year lease. If the Company's rights under the lease would end by the dissolution of the Company and revert to the Defendants in Error, such result would be accomplished at the dissolution of the Company. The question in respect of what had become of those rights would not remain in abeyance indefinitely.

Fifth. The statute does not permit the reorganization of a company which for ten years preceding the enactment of the statute had ceased to carry on the business for which it was organized, unless the corporation had been organized to carry on its business either in the County of Houghton, Keweenaw, or Ontonagon, and for that reason the Pioneer Iron Company could not be reorganized under the statute.

The Bill alleges that "from the 10th of March, 1866, the Pioneer Iron Company ceased to carry on the business for which it was organized and has not since been engaged in nor carried on any business contemplated by its articles of association." (Record, p. 8.) The Supreme Court of Michigan found those averments to be true.

The Court says, (Record p. 569): "Under the allegations of the Bill, *as well as under the proofs*, the Pioneer Iron Company is used as a 'dummy' for the benefit of the defendant companies. The defendants own, and have owned for many years, all its capital stock, its furnaces and property, both real and personal. They have managed all its affairs, and for their own benefit. All its accounts if any have been kept in the name of the Pioneer Iron Company, have been keept upon the books of the defendants."

Again on p. 575, the Court says: "Soon after the execution of the ninety-nine year lease, the Pioneer Iron Company

made same explorations upon certain portions of the land covered thereby, found ore, but not in paying quantities, abandoned the explorations and for fully 43 years made no other attempt to avail itself of this mining right. In 1866 it conveyed to the Iron Cliffs Company by lease for a period of ten years all its iron works, buildings, lands, and rights, &c. (reserving, however, certain rights and privileges not necessary to mention), and provided by the lease that dividends should be paid directly to its stockholders, rather than into its treasury. The Iron Cliffs Company afterwards became the owner of all its stock, and thereafter carried on the furnace business. The Pioneer Iron Company never thereafter took any control of its furnace. *It was regarded as merged in the Iron Cliffs Company.* So notorious was this that in the year 1877 the Commissioner of Mineral Statistics, in his first annual report, speaking of this company, said: 'The Pioneer Iron Company, by whom the furnace was built, became subsequently merged into the Iron Cliffs Company.' In subsequent reports it was referred to as 'absorbed by the Iron Cliffs Company.' The officers of the Pioneer Company thereafter neither made nor filed any reports as the law expressly required them to do."

It is submitted that the fact is to be taken as established in the case that for ten years preceding June 8, 1889, when the statute was passed, the Company had ceased to carry on the business for which it was organized.

The Company was organized to carry on its business only in Marquette County, and no provision was made in its articles to carry on business in either of the counties of Houghton, Keweenaw or Ontonagon, and was therefore by the express terms of the statute not permitted to reorganize. Record, p. 17; Article 6 of the Articles of Association).

Sixth. The effect of reorganization is declared by Sec. 2 of the statute to be that, "the renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal." This provision could not apply to the ninety-nine year lease.

From the time of the expiration of its charter on April 2, 1887, the Pioneer Iron Company did not hold or own the ninety-nine year lease, and within the intent and meaning of the statute the lease was not "property held and owned by the corporation before renewal." If by the expiration of the charter, the rights of the Company under the lease ceased, and they reverted to the complainants or if the privileges granted by the charter came to and end, no statute subsequently enacted could renew and transfer such rights and privileges to the renewed company.

Seventh. This suit was commenced March 3, 1900. (Record p. 21). The proofs were taken at a session of the Circuit Court held from the 19th to the 23rd of March, 1901. (Rec. p. 52).

To meet the objection that the above proceedings taken on the 7th of April, 1889, were without force, on the 3rd day of April, 1901, after the proofs had been taken in the case, further pretended proceedings were taken to adopt perfected and amended articles for the reorganization of the Pioneer Iron Company, which articles were filed April 9, 1901, in the office

of the Secretary of State, and were offered in evidence on the final hearing of the suit in the Circuit Court. (Record p. 530 to 542).

Evidently, if there had been no reorganization of the Pioneer Iron Company prior to the bringing of this suit, such reorganization could not be made while the suit was pending, so as to affect the controversy in the suit. These proceedings were irrelevant to the case.

But it may be noted that the statute requires the action for reorganization to be taken by at least four-fifths of the capital stock, at a special meeting of the stockholders. This last action was taken fourteen years after the expiration of the charter of the Company, and no proof was offered that the persons taking part in these proceedings were holders of the stock of the Company. Their names and the amounts of stock represented by them appear at pp. 534, 535 and 537 of the Record. These are entirely different persons from those who assumed to be stockholders in the proceedings attempted for reorganization on October 7, 1889. See Record, p. 297. That certain persons got together and assumed to be stockholders is not a sufficient compliance with the statute. To constitute a reorganization it must be shown by proof that the action was taken by those who were then in fact holders of the stock.

IV.

The questions to be determined upon the subject of the reorganization of the Pioneer Iron Company which have been called to the attention of the Court and discussed in this brief, we believe are not questions for the determination of this

Court, and we submit that, if in the view which the Court may take, the question whether the Pioneer Iron Company was or was not reorganized should be determined in order to a proper disposition of the suit, the case should be remitted to the State Court for such determination.

These questions are distinctly and wholly questions of the local law of Michigan, and it seems to us they should be determined by the Courts of the State. We understand that such disposition of the case would be in accordance with the practice of this Court.

Murdock vs. City of Memphis, 20 Wall., 590 at 634, 636.
Telluride Power Co. vs. Rio Grande R. Co., 175 U. S., 639 at 647.

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